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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/560,246	04/26/2000	Nadia M. Corlett	9911-01	2384

36790 7590 11/17/2006

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EXAMINER

STEPHENS, JACQUELINE F

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 11/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/560,246	Applicant(s) CORLETT, NADIA M.	
	Examiner Jacqueline F. Stephens	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 27-46 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 27-46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>6/2/06</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 27-46 have been considered but are moot in view of the new ground(s) of rejection.

Information Disclosure Statement

2. Applicant should note that the large number of references in the attached IDS have been considered by the examiner in the same manner as other documents in Office search files are considered by the examiner while conducting a search of the prior art in a proper field of search. **See MPEP 609.05(b)**. Applicant is requested to point out any particular references in the IDS which they believe may be of particular relevance to the instant claimed invention in response to this office action.

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to

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be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 27-46 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-22 of copending Application No. 11/421,758. Although the conflicting claims are not identical, they are not patentably distinct from each other because the present application claims a diaper that is vacuum-packaged. The present application claims a compressible absorbent article that is vacuum-packaged in a substantially flexible material, the step of compressing being performed without folding or rolling of the disposable diaper. The '758 application similarly claims the method of packing a vacuum-packaged article and requires a substantially air impermeable packaging material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a substantially air impermeable material to retain the article in its compressed condition. The steps recited in the '758 are broader than the steps recited in the present application for vacuum-packaging the absorbent article and thus obviously includes the scope of the method of packaging a vacuum-packaged diaper.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 27-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meyer USPN 4936460 in view of Cope et al. USPN 3716961.

As to claims 27-28, 34, 35 Meyer teaches a method of packaging an individually packaged toy, vacuum-packed within an interior space of a substantially flexible, substantially air impermeable material (Abstract, col. 1, lines 28-33 and col. 2, lines 29-36). The compressible article is capable of fitting into the pocket of an article of clothing as no specific dimensions are recited and the limitation of fitting into a pocket is relative to the size of the pocket.

Meyer teaches the packaging is hermetically sealed and a negative pressure exists with the packing such that the compressed article is maintained in a compressed condition (col. 2, lines 29-36 and col. 4, lines 25-27). Meyer does not teach the article is a disposable diaper or training pant. However, vacuum-packaging disposable diapers is known in the art. For example, Cope teaches an individually vacuum-packed disposable diaper (Cope col. 3, lines 15-17 and col. 7, lines 29-45). Additionally, Meyer teaches vacuum packaging compressible items is desired to reduce relatively bulky items that occupy a substantial amount of shelf space when displayed for sale in retail stores. Meyer further teaches this method of packaging helps to eliminate soiling from

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handling. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the invention of Meyer with a disposable absorbent article, such as a diaper. Doing so would provide a diaper package that occupies less space as compared to an uncompressed diaper package. Individually packaging the diaper has the advantage of providing a diaper that is not subject to soiling or handling prior to use.

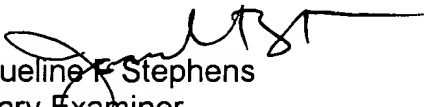
As to claims 29 and 30, Meyer/Cope teaches folding prior to vacuum-packaging (Cope col. 7, lines 30-45).

As to claims 31-33, Meyer/Cope do not specifically teach a folded arrangement having three crosswise folds or a rolled arrangement prior to compression. However, Meyer/Cope teaches the general conditions of reconfiguring the article prior to compression (Cope col. 7, lines 30-45). It would have been an obvious matter of design choice to fold the article as claimed or provide a rolled arrangement, since applicant has not disclosed the specific claimed arrangements solves any state d problem and it appears that the invention would perform equally well in a folded condition as taught in Cope.

As to claims 36-46, see the discussion of claims 27-33, supra. Meyer/Cope teaches compression to twenty percent (col. 1, lines 29-31) of the uncompressed thickness. The claimed reduction in volume would have been obvious to one of

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ordinary skill in the art by optimizing the caliper or size of the article and the extent of compression. Moreover, discovering optimum values only involves routine skill in the art, *In re Boesch*, 617 F. 2d 272, 205 USPQ 215 (CCPA 1980).



Jacqueline R. Stephens
Primary Examiner
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September 18, 2006